



# WASHOE COUNTY

"Dedicated To Excellence in Public Service"

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## STAFF REPORT

BOARD MEETING DATE: September 9, 2014

**DATE:** August 12, 2014  
**TO:** Board of County Commissioners  
**FROM:** Wendy Pitts, Washoe County Property Program Manager,  
Community Services Department, 328-2045 [wpitts@washoecounty.us](mailto:wpitts@washoecounty.us)  
**THROUGH:** Dave Solaro, Arch., P.E., Director  
Community Services Department, 328-2040, [dsolaro@washoecounty.us](mailto:dsolaro@washoecounty.us)  
**SUBJECT:** Approve a Commercial Lease between Ryder Homes of Nevada, Inc., (Owner)  
and Washoe County (Tenant), for the use of 80 parking spaces located at 0 Pine  
Street, APN 011-175-13, retroactively to September 1, 2014 [\$30,600], to provide  
additional parking for Washoe County employees, as authorized under NRS  
244.275. (Commission District 3.)

### SUMMARY

A Commercial Lease Agreement between Washoe County and Ryder Homes of Nevada, will allow County employees to utilize a flat parking lot located one block east of the Liberty Center Office Building, at 0 Pine Street (known as APN 011-175-13) to provide sufficient parking spaces for all employees currently working on the east side of Virginia Street in the downtown Reno area.

The parking lot at 0 Pine was temporarily used during the repair of the Liberty Garage and staff suggests extending the term of occupancy to provide an additional 80 parking spaces for Washoe County employees.

This agreement is being brought retroactively to September 1, 2014.

The Commercial Lease agreement, will allow Washoe County employees to choose to park in the Liberty garage and have covered parking or on the flat lot, for those who have larger vehicles which make using the garage problematic. This action is authorized under Nevada Revised Statutes 244.275.

Washoe County Strategic Objective supported by this item: Sustainability of our financial, social and natural resources.

### PREVIOUS ACTION

There is no previous action.

AGENDA ITEM # 801

## **BACKGROUND**

The Board of County Commissioners acquired the Liberty Garage located at 220 S. Center Street in conjunction with the office building located at 350 S. Center in June 2004, to provide office and parking for the critical downtown user groups including Social Services, Public Defender, Alternate Public Defender, Library staff and the Sheriff's Work Program. The Liberty Garage also accommodates tenants from 200 S. Virginia Street building and the County vehicles assigned to the downtown departments.

Due to the current number of employees, county vehicles, and outside users which are sharing the Liberty Garage, it has been determined that the lease of 80 spaces at 0 Pine Street is desirable to ensure there is sufficient parking for Washoe County employees, as well as any employees traveling in from the outlying areas that have to be downtown for business or meetings.

This agreement is for a three (3) year term, commencing retroactively to September 1, 2014 and will terminate on August 31, 2017, unless terminated earlier as allowed within the agreement. The agreement includes the standard funding- out clause, in the event this site is not needed in the future.

## **FISCAL IMPACT**

The Commercial Lease agreement for the use of the 80 parking spaces is established in the amount of Two Thousand Five Hundred Fifty dollars per month (\$2,550). This rate will be fixed for the initial 12 month term, followed by a three (3%) percent increase applied for the remaining 24 month term as shown below:

<b><u>TERM</u></b>	<b><u>MONTHLY</u></b>	<b><u>ANNUAL</u></b>
9/1/14 – 8/31/15	\$2,550.00	\$30,600
9/1/15 – 8/31/17	\$2,626.50	\$31,518

There are sufficient funds budgeted for this parking agreement in the CSD cost center 105000 within the two long-term lease accounts 710600 and 710610.

## **RECOMMENDATION**

It is recommended the Board of County Commissioners approve a Commercial Lease between Ryder Homes of Nevada, Inc., (Owner) and Washoe County (Tenant), for the use of 80 parking spaces located at 0 Pine Street, APN 011-175-13, retroactively to September 1, 2014 [\$30,600], to provide additional parking for Washoe County employees, as authorized under NRS 244.275.

## **POSSIBLE MOTION**

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve a Commercial Lease between Ryder Homes of Nevada, Inc., (Owner) and Washoe County (Tenant), for the use of 80 parking spaces located at 0 Pine Street, APN 011-175-13, retroactively to September 1, 2014 [\$30,600], to provide additional parking for Washoe County employees, as authorized under NRS 244.275."

## COMMERCIAL LEASE

### (Parking Spaces)

This Commercial Lease Agreement ("Lease") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the following parties and involves the following Premises.

Landlord	Ryder Homes of Nevada, Inc. a Nevada corporation 985 Damonte Ranch Parkway, Suite 140 Reno, Nevada 89521
Tenant	Washoe County, Nevada, a political subdivision of the State of Nevada 1001 East Ninth Street Reno, Nevada 89512 Attn: Property Manager
Premises	80 parking spaces located on a parking lot at 0 Pine Street, Reno Nevada, more particularly depicted and described as APN 011-175-13.

### WITNESSETH:

- A. Premises. In consideration of the rent hereinafter reserved and of the covenants hereinafter contained, Landlord does hereby lease the Premises to Tenant, and Tenant hereby leases the Premises from Landlord. (hereinafter referred to as the Premises).
- B. Term. The term of this Lease shall be for thirty-six (36) months, commencing retroactively to September 1, 2014, and shall terminate at 12:00 o'clock, midnight, on August 31, 2017.
- C. Option. The Tenant shall have the right to exercise one (1) six month renewal option by notifying the Landlord in writing within 10 days of the expiration of the initial term.
- D. Rent. In consideration of the leasing of the aforesaid Premises, Tenant does hereby covenant and agree with Landlord to pay rental in the sum of Two Thousand Five Hundred Fifty dollars (\$2,550.00) per month in lawful currency of the United States of America. Rent shall increase 3% upon the first anniversary of this Agreement to \$2,626.50 per month and shall be fixed for the remaining initial term and any extensions thereof. Said rental shall be payable monthly by the 10<sup>th</sup> day of each month, commencing retroactively to September 1, 2014, the term of this Lease and any subsequent exercised Options. Property taxes and assessments are to be paid by Landlord.
- E. Indemnification and Public Liability Insurance.
  - a. Indemnification: To the fullest extent permitted by law and without waiving any immunities (except as provided under the law of Nevada, including NRS 41.0305 through NRS 41.0309, as amended from time to time), each party ("**Indemnifying Party**") shall indemnify, hold harmless and defend the other party (the "**Indemnified Party**") and its related parties from and against all costs, claims and liability arising out of or in any way connected with any act, error or

omission of the Indemnifying Party or its related parties in the performance of this Agreement. **"Costs, Claims and Liability"** means all (i) third party claims, actions, damages, losses, judgments, injuries, settlements, including those related to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (including the loss of use resulting therefrom) and other economic damages and (ii) reasonable costs (including salaries of employees) and expenses associated with investigation, discovery and litigation of any claim or liability, including attorney's fees, including those paid to settle the case. **"An act, error or omission"** includes acts, errors or omissions that constitute negligence or willful tortious conduct as determined by a court of competent jurisdiction under applicable law, and further includes breaches of this agreement and/or violations of law. A **"related party"** includes all officers, employees, agents, contractors and subcontractors of the party who are acting within the scope of their assigned and lawful duties, as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The obligations of each indemnifying party hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. The indemnification shall not be diminished or limited in any way to the total limits of insurance required in this contract or otherwise available to the indemnifying party. If the liability is asserted by an employee of an indemnifying party, the indemnification herein is not limited to damages, compensation or benefits payable by or for the indemnifying party under worker's compensation acts, disability benefit acts or other employee benefit acts. Each indemnifying party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder. Either party may set off any of its rights under this subsection against any consideration it provides under this agreement. The obligations to indemnify and save harmless herein survive the expiration or termination of this Agreement.

- b. Insurance. Tenant at its sole cost and expense: (1) Shall provide its own insurance covering all improvements owned by the Tenant located at the demised Premises and hereby waives and releases any cause of action or right of recovery which Tenant may have against Landlord for damages to the Premises or any Tenant-owned improvements on the Premises that are caused by fire, explosion, or act of God or any third party.
- c. May fund any financial obligation relating to its negligence and liability through either a self-funded program or through an Insurance Carrier maintaining an A rating by A.M. Best. Any and all claims related to the use of the demised Premises by Tenant shall be forwarded to Tenant in a timely manner.

F. Utility Charges. Landlord will pay any/all utilities charges. If there is deemed to be any clean-up costs during the use of the parking lot, tenant will be responsible.

G. Fixtures and Personal Property. It is agreed between the parties hereto that Tenant may install any trade fixtures, equipment, and other personal property on the Premises of a temporary nature, and Landlord agrees that Tenant shall have the right at any time,

provided Tenant is not in default of any of the terms of this Lease, to remove any and all such trade fixtures, equipment, and other personal property that it may have stored or installed in the Premises; provided further, however, that in such event Tenant shall restore the Premises substantially to the same condition, except for ordinary wear and tear, in which they were at the time Tenant took possession. Tenant shall not be obligated to restore the Premises substantially to the same condition in which they were at the time Tenant took possession in the event of changes and alterations made upon the written approval of Landlord or in the event the Premises are surrendered because of default on the part of Landlord. Tenant shall not without Landlord's written approval which may be withheld for any reason construct any buildings or other permanent structures on the Premises.

H. Tenant Forbidden to Encumber Landlord's Interest. It is expressly agreed and understood between the parties hereto that nothing in this Lease shall ever be construed as empowering Tenant to encumber or cause to be encumbered the title or interest of Landlord in the Premises in any manner whatsoever. In the event that, regardless of this prohibition, any person furnishing or claiming to have furnished labor or materials at the request of Tenant or of any person claiming by, through, or under Tenant shall file a lien against Landlord's interest therein, Tenant, within 30 days after being notified thereof, shall cause said lien to be satisfied of record or the Premises released therefrom by the posting of a bond or other security as prescribed by law, or shall cause same to be discharged as a lien against Landlord's interest in the Premises by an order of a court having jurisdiction to discharge such lien.

I. Use of Premises.

- a. Landlord covenants that so long as Tenant is not in default hereunder, Tenant shall have exclusive and quiet use and enjoyment of the Premises. Landlord shall defend Tenant in the peaceful and quiet enjoyment of the occupancy, against claims of all persons claiming through or under the Landlord.
- b. Tenant further covenants and agrees that said demised land during the term of this Lease shall be used only and exclusively for the parking of motor vehicles or, with Landlord's advance written approval, other lawful purposes; and that said Tenant shall not knowingly use or suffer anyone to use said Premises for any purpose in violation of the laws of the United States, the State of Nevada, the County of Washoe, City of Reno, or any other governmental unit wherein the Premises may be located. Tenant will provide their own security company which will have the right to tow any unauthorized vehicle from the Premises. . The landlord is not obligated to patrol or secure the Premises. The Premises is being leased in its present condition and landlord is under no obligation for any improvements to it.

J. Compliance with Regulations of Public Bodies. In connection with the use of the parking lot, County agrees to obey all applicable federal, state and local laws.

K. Signs. During the term of this Lease, Tenant may install such signs on the Premises as may be reasonable, provided, however, that such signs shall be first approved by Landlord, which approval shall not be unreasonably withheld.

- L. **Attorneys' Fees.** In the event of a dispute because of which either party to this Lease employs counsel to pursue or protect any of the rights afforded that party by the terms hereof, or the terms of any related subsequent agreement, or to defend against the claims of the other party hereto, neither party shall be entitled to recover any amount as a reasonable attorney's fee, for any reason, even if said party is deemed to be the prevailing party in such action or proceeding. Costs of suit may be awarded as allowed by law.
- M. **Landlord's Right of access to Premises.** Tenant agrees and covenants that Landlord or its agents, for the purpose of examining or inspecting the condition of the Premises, shall have access to the said Premises. Landlord shall have the right to show the Premises during the 90 days prior to termination of this Lease to prospective tenants, at reasonable times during normal business hours. Landlord further reserves the right to show the Premises to prospective purchasers. Except in the event of an emergency, Landlord shall not have entrance to the Premises without the accompaniment of an employee of Tenant.
- N. **Assignment or Subletting.** Tenant may, with the consent of Landlord, which consent shall not be unreasonably withheld, assign this Lease or sublet in whole or in part the Premises provided that Tenant herein shall continue to remain liable and responsible for the payment of rental due hereunder. For the purpose of this clause, a merger or consolidation of Tenant with another business entity or an assignment to a wholly owned subsidiary shall not constitute an assignment requiring the consent of Landlord. Landlord shall have the right to sell, transfer or assign the leased Premises without consent of Tenant, and Tenant agrees to attorn to landlord's purchaser, transferee or assignee. Such sale, transfer or assignment by Landlord shall relieve Landlord of its obligations hereunder if the purchaser, transferee or assignee assumes in writing Landlord's obligations hereunder.
- O. **Repairs.** Tenant, after the commencement of the term of this Lease, shall, at its own expense, maintain the Premises in as good condition as the Premises were upon the commencement of this term, except for (i) reasonable wear and use during the term of this Lease, or any extension thereof; (ii) structural repairs or repairs made necessary by reason of fire or other casualty; (iii) damage caused by negligent acts or omissions by Landlord or its agents; or (iv) as otherwise specifically provided for in this Lease.
- P. **Default by Tenant.**
- a. **Events of Default.** Each of the following shall be deemed a default by Tenant and a breach of this Lease:
- i. The dissolution or the commencement of any action or proceeding for the dissolution or liquidation of Tenant, whether instituted by or against Tenant or for the appointment of a receiver or trustee of the property of Tenant.
  - ii. The taking possession of the Premises or property of Tenant upon the Premises by any governmental officer or agency pursuant to statutory authority for the dissolution, rehabilitation, reorganization, or liquidation of Tenant.

- iii. The making by Tenant of any "assignment for the benefit of creditors." If any event of default described in subparagraph (i) or (ii) above shall be involuntary on the part of Tenant, there shall be no default within the meaning of this Lease, if such event is dismissed or vacated by Tenant within 60 days from the occurrence of such event; otherwise such event shall constitute a default hereunder.
  - iv. A failure to pay the rent herein reserved, or additional rent, or any part thereof, when it is due. Tenant shall be allowed up to 1 month's waived late fee in any given calendar year, if the cause was due to budget cycle billing.
  - v. Failure in the performance of any other covenant or condition of this Lease on the part of Tenant to be performed, for a period of 10 days after receipt of written notice thereof.
- b. For the purposes of subparagraph a. of this paragraph P, no failure on the part of Tenant in the performance of work required to be performed or acts to be done or conditions to be modified shall be deemed to exist if steps shall have, in good faith, been commenced promptly by Tenant to rectify the same and shall be prosecuted to completion with diligence and continuity. If the matter in question shall involve building construction and if Tenant shall be subject to unavoidable delay, either by reason of governmental regulations restricting the availability of labor or materials, or by strikes or other labor troubles, or by reason of conditions beyond the control of Tenant, Tenant's time to perform under said subparagraph a. of this Paragraph P. shall be extended for a period commensurate with such delay.
- c. In the event of any such default of Tenant, Landlord may serve a written notice upon Tenant that Landlord elects to terminate this Lease upon a specified date not less than 30 days after the date of the serving of such notice (except in the case of a default under subparagraph 2 above for nonpayment of rent for which there is no cure period in which event such date shall not be less than 5 days after the notice given), and if the default remains uncured or the period is not extended as herein provided, this Lease shall then expire on the date so specified as if that date had been originally fixed as the expiration date of the term herein granted.
- d. In the event this Lease shall be terminated as hereinbefore provided, or by summary proceedings or otherwise, or in the event the Premises or any part thereof shall be abandoned by Tenant, Landlord, or its agents, servants, or representatives may immediately or at any time thereafter, reenter and resume possession of said Premises or such part thereof, and remove all persons and property therefrom, either by summary dispossession proceedings or by a suitable action or proceeding at law, without being liable for any damages therefor. Moving out of the Premises or leaving the Premises vacant shall not be deemed an abandonment of the Premises, provided that Tenant continues to pay the rent as and when due. Reentry by Landlord shall not be deemed an acceptance of a surrender of this Lease. In the event that this lease is terminated by summary



proceedings, or otherwise as provided herein, or if the Premises shall have been abandoned and whether or not the Premises shall be relet, the entire amount of rent that would be paid to the expiration date of this Lease shall become due and payable. In the event of such termination or abandonment, Landlord shall be obligated to use its best efforts to mitigate any damages it may have against Tenant. In the event the Premises are relet by Landlord, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, in addition to any other damages becoming due hereunder, an amount equal to the amount of all rents and additional rent reserved under this Lease, less the net rent, if any, collected by Landlord on reletting the Premises, which shall be due and payable by Tenant to Landlord on the several days on which the rent and additional rent reserved in this Lease would have become due and payable; that is to say, upon each of such days Tenant shall pay to Landlord the amount of deficiency then existing. Such net rent collected on reletting by Landlord shall be computed by deducting from the gross rents collected all reasonable expenses incurred by Landlord in connection with the reletting of the Premises or any part thereof, including broker's commissions and the cost of repairing, renovating, or remodeling said Premises; however, the expenses to be deducted in computing the net rent collected on reletting shall not include the cost of performing any covenant contained herein required to be performed by Tenant. The obligation of Landlord to use its best efforts to mitigate any damages it may have against Tenant shall not preclude the right of Landlord to obtain by judicial process a judgment for the entire amount of rent that would be paid to the expiration date of this Lease, if said Lease is terminated by summary proceedings or otherwise as provided herein. In the event Landlord obtains a judgment in such manner, Landlord shall be obligated to use its best efforts to mitigate any damages it may have recovered in accordance with the provisions of this paragraph.

Q. Default by Landlord.

- a. Landlord shall be in default under this Lease if Landlord repudiates, breaches or fails to perform any obligation, term or provision in this Lease which continues for more than ten working days from the date that written notice is given to Landlord by Tenant.
- b. In the event of a default by Landlord, Tenant may (i) continue in possession of the Premises and cure the default and abate rent payments to recover the cost (ii) terminate this Lease; or (iii) pursue any other remedy afforded by the laws of Nevada, including injunctive relief.

R. Subordination. This Lease, its terms, condition, and all leasehold interests and rights hereunder, are expressly made, given, and granted subject and subordinate to the lien of any bona fide mortgage that Landlord may secure from any bank, life insurance company, savings and loan association, or other recognized lending institution; and Tenant agrees to execute any instrument or instruments required by the mortgagee to subordinate the terms of this Lease to any such first mortgage that may be placed upon the Premises by Landlord; provided, however, that said mortgagee enters into a non-disturbance agreement with Tenant obligating any party acquiring title or right of



possession under or by virtue of such mortgage to be bound by this Lease and by all of Tenant's rights hereunder, provided that Tenant is not then in continued default in the payment of rent or otherwise under the terms of this Lease.

- S. In the event that any part of the Premises shall be condemned or taken by any county, federal, state or other authority for any purpose, then the term of this Agreement shall cease on the part so taken from the day the possession of that part is required for any public purpose. Thereafter the Lessee or the Landlord shall have the right to either cancel this Lease or to continue in the possession of the remainder of the same under the terms herein provided, except that the area of occupancy shall be reduced in proportion to the area of that portion of the Premises taken for such public purpose. All damages awarded for the taking of the Premises for any public purpose shall belong to and be the property of the party suffering such damage whether such damage is awarded as compensation for diminution in value to the leasehold or to the fee of the Premises.
- T. Notices. All notices required by the law and this Lease to be given by one party to the other shall be in writing, and the same shall be served by delivery in person or by certified mail, return receipt requested, in postage prepaid envelopes addressed to the addresses listed above or such other addresses as may be by one party to the other designated in writing.
- U. Funding Out Clause. Pursuant to NRS 244.320, in the event Tenant fails to appropriate funds for the purpose of meeting its obligations under this Lease, in any subsequent fiscal year after the effective date of the Agreement, Landlord hereby agrees to cancel this Lease and hold Tenant harmless from any penalty, charge or sanction including but not limited to damages or any deficiency for unpaid rent beyond the date of termination under Paragraph P of this Lease. Tenant agrees to provide written notice to Landlord of this eventuality, should it occur, and to provide notice to all persons holding parking permits issued by Tenant.
- V. Miscellaneous. The covenants and agreements contained herein shall bind and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall include the plural, and the plural number shall include the singular; the use of any gender shall be applicable to all genders. All covenants, agreements, and undertakings shall be joint and several. The parties agree that neither shall record a Memorandum of this Lease in the Official Records of Washoe County, State of Nevada, or elsewhere, and that this Lease shall be governed by and construed in accordance with the laws of the State of Nevada. No modifications or changes shall be made to this Lease unless the same are made in writing and signed by the party against whom enforcement is sought. There are no agreements between the parties other than those written herein and all discussions, negotiations and representations made by or between the parties with regard to this Lease are merged herein. This Lease may be executed in counterparts and becomes effective when the counterpart signature pages are assembled together.

*Reminder of page left blank intentionally*



IN WITNESS WHEREOF, this agreement has been executed as of the day and year stated below.

TENANT:

Washoe County, a political Subdivision of the State of Nevada

By: \_\_\_\_\_ Date \_\_\_\_\_  
David Humke, Chairman  
Washoe County Commission

Attest:

By \_\_\_\_\_ Date \_\_\_\_\_  
Nancy Parent, County Clerk